State of Connecticut

DIVISION OF CRIMINAL JUSTICE

Remarks by Francis J. Carino
Supervisory Juvenile Prosecutor
Office of the Chief State's Attorney

Juvenile Jurisdiction Policy and Operations Coordinating Council
November 12, 2009

Since the enactment of PA 09-7 of the September Special Session on October 5th, I have had an opportunity to review it and have started presenting training on what the law says to police officers, juvenile court staff and civilians in advance of the January 1, 2010 effective date.

Before getting into the specific sections of the Act, one question has repeatedly come up for which I am not able to satisfactorily answer and that is: why did the Legislature carve out an exception from juvenile court jurisdiction most offenses involving the operation of a motor vehicle by 16 year old. I can explain the reason to exclude the minor infractions and violations (traffic tickets) by explaining that we already have an efficient and cost effective means to handle those cases using the Central Infractions Bureau and those cases can be appropriately handled by that system. Also, because the juvenile court does not impose fines, by keeping the current system for those offenses, a significant revenue stream would remain undisturbed.

I have a more difficult time however explaining why the Chapter 248 offenses have been singled out for exclusion when committed by a 16 year old. These offenses include such offenses as speeding, reckless driving, evading responsibility and driving under the influence of alcohol or drugs. Perhaps it is the potentially serious and dangerous nature of these cases that prompted the exclusion. But I would suggest that crimes that result in the death or serious physical injury of a person, such as assault, or crimes involving weapons, or sexual assault involving weapons or serious physical injury, or drug trafficking, are at least as serious and dangerous, yet the cases of 16 year olds involving those charges will be initiated in the juvenile court.

The judges of the Superior Court enacted Practice Book rule §27-4A requiring that four categories of offenses be handled judicially, by the court, rather than non-judicially by the

probation officer. Those offenses include felonies, offenses involving the theft or use of a motor vehicle, the sale or possession with the intent to sell any drugs or the use or possession of a firearm. So the judges seem to think that certain offenses involving motor vehicles are comparable to offenses classified as felonies and those offenses involving weapons or drugs.

When the Legislature enacted PA 95-225, it created the category of "serious juvenile offense" and identified specific crimes as "serious juvenile offenses" and also provided some very strict consequences for juveniles charged with or convicted of a "serious juvenile offense." The list of so-called "SJO charges" has grown over the years since it was created, but to this day, it has never included a Chapter 248 motor vehicle offense. The language of the current Act seems to single out Chapter 248 offenses, for the first time in history, as being more serious and dangerous than any other criminal offense such that a 16 year old charged with one of those offenses should have his or her case handled as an adult matter from the outset.

It is hard to explain why a 16 year old who blows a .02 on a breathalyzer at a sobriety check point, and is charged with operating under the influence, is apparently mature enough to have his or her case handled in the adult court due to the seriousness and dangerousness of the offense, but if he or she is involved in an accident and kills someone as a result of their intoxication, apparently due to brain development issues and public policy, that same 16 year old, now charged with manslaughter in the second degree with a motor vehicle, is entitled to the therapeutic and rehabilitative philosophy, programs and services available in the juvenile court system.

But the Act is what it is and my purpose here today is to point out what I think are perhaps technical or maybe even just drafting errors in the Act as written.

ISSUE #1 – Effective date

The "raise the age" provisions of the Act applicable to 16 year olds take effect on January 1, 2010.

Concerns:

It is not clear if that means the new provisions will apply to ***offenses committed*** on or after that date or will it apply to ***arrests made*** on or after that date even if the offense was committed prior to that date.

Also, if a person is emancipated between the date of the offense and the arrest, what court would have jurisdiction?

Suggestion:

The Act should apply to offenses that occurred after the effective date and it should clearly indicate that the child's age and status (emancipated or not) at the time of the offense will determine the court of proper jurisdiction.

ISSUE #2 - Definitions

There are certain critical definitions in Section 69 that, as written, appear to be inconsistent or incomplete.

- For purposes of delinquency matters and proceedings, "child" in subsection (1)(A) means any person:
  - (i) under 17 years of age who has not been legally emancipated, or
  - (ii) 17 years of age or older who, prior to attaining 17 years of age, has committed a delinquent act ***and***, subsequent to attaining 17 years of age,
    - (I) violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to such delinquency proceeding, or
    - (II) wilfully fails to appear in response to a summons under section 46b-133, as amended by this act, with respect to such delinquency proceeding

Concerns:

1. The definition does not seem to include a person "17 years of age or older who, prior to attaining 17 years of age, has committed a delinquent act" but who ***hasn't*** also "violated any order of the Superior Court or condition of probation or failed to appear for a court hearing."

   Example: a person who commits a crime at 16 but doesn't get arrested until after turning 17. Unless they ***also*** violated a court order, condition of probation or failed to appear, they would not be included in the definition.

2. The definition does not seem to include a person 17 years of age or older who, prior to attaining 17 years of age, has committed a delinquent act and, subsequent to attaining 17 years of age, wilfully fails to appear for a court hearing ***other than*** in response to a summons under section 46b-133;

   Example: a person 17 or older who appears in court in response to the initial summons but then fails to appear for a subsequent court hearing in the delinquency case.

Suggestion:

While these issues actually exist to some extent with the current law prior to PA 07-4 and PA 09-7, the issues can be resolved with the following amendment:

> (1) "Child" means any person under sixteen years of age, except that (A) for purposes of delinquency matters and proceedings, "child" means any person (i) under seventeen years of age who has not been legally emancipated, or (ii) seventeen years of age or older who, prior to attaining seventeen years of age and prior to being emancipated, has committed a delinquent act , or (iii) seventeen

years of age or older who, prior to attaining seventeen years of age, has committed a delinquent act and, subsequent to attaining seventeen years of age, (I) violates any order of the Superior Court or any condition of probation ordered by the Superior Court with respect to such delinquency proceeding, or (II) wilfully fails to appear in response to a summons under section 46b-133, as amended by this act, with respect to such delinquency proceeding, or at any other court hearing of which the child had notice, and (B) for purposes of family with service needs matters and proceedings, child means a person under seventeen years of age;

- In subsection (5)(A) a child may be convicted as "delinquent" who has

  (i) ***while under 16 years of age,*** violated any federal or state law or municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs,
  (ii) wilfully failed to appear in response to a summons under §46b-133, as amended by this act, or at any other court hearing of which the child had notice,
  (iii) violated any order of the Superior Court, except as provided in §46b-148, or
  (iv) violated conditions of probation as ordered by the court;

Concern:

As written, because of its position in the paragraph, the phrase "while under 16 years of age" only applies to subsection (i). The clear intent was for it to apply to subsections (ii), (iii) and (iv) as well.

Suggestion:

Amend section (5)(A) as follows:

(5) (A) A child may be convicted as "delinquent" who, while under sixteen years of age, has (i) [~~while under sixteen years of age,~~] violated any federal or state law or municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (ii) wilfully failed to appear in response to a summons under section 46b-133, as amended by this act, or at any other court hearing of which the child had notice, (iii) violated any order of the Superior Court, except as provided in section 46b-148, or (iv) violated conditions of probation as ordered by the court;

- In subsection (5)(B) a child may be convicted as "delinquent" who has

  (i) while 16 years of age, violated any federal or state law, other than

    (I) an infraction,
    (II) a violation,
    (III) a motor vehicle offense or violation as defined in chapter 248, or
    (IV) a violation of a municipal or local ordinance,

(ii) wilfully failed to appear in response to a summons under §46b-133, as amended by this act, or at any other court hearing of which the child had notice,

(iii) violated any order of the Superior Court, except as provided in §46b-148, or

(iv) violated conditions of probation as ordered by the court;

Concern:

Similar to above, as written, because of its position in the paragraph, the phrase "while 16 years of age" only applies to subsection (i). The clear intent was for it to apply subsections (ii), (iii) and (iv) as well.

Suggestion:

Amend section (5)(B) as follows:

(B) A child may be convicted as "delinquent" who, while sixteen years of age, has (i) [~~while sixteen years of age,~~] violated any federal or state law, other than (I) an infraction, (II) a violation, (III) a motor vehicle offense or violation as defined in chapter 248, or (IV) a violation of a municipal or local ordinance, (ii) wilfully failed to appear in response to a summons under section 46b-133, as amended by this act, or at any other court hearing of which the child had notice, (iii) violated any order of the Superior Court, except as provided in section 46b-148, or (iv) violated conditions of probation as ordered by the court;

- For purposes of family with service needs matters and proceedings, "child" in subsection (1)(B), means a person under 17 years of age. Subsection (2)(A) defines "youth" as a person 16 or 17 who has not been legally emancipated. Subsection (7) defines "Family with service needs" as a family that includes a ***child or a youth sixteen years of age*** who (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's or youth's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations, or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child or youth;

Concerns:

Since a 16 year old who runs away, is beyond control or is truant is both a "child" and a "youth," to say that "family with service needs" is a family that includes "a ***child or a youth sixteen years of age*** who..." it could be read to mean that the phrase "sixteen years of age" applies to both the words "child" and "youth" creating the possible interpretation that ***only*** a sixteen year old could be referred to court for being a member of a family with service needs.

Also, since a person can be emancipated at age 16, and because Section 90(7)(C) of the Act states that an emancipated minor may not be the subject of FWSN petition, a 16 year old who is emancipated should be excluded from the definition of "child" for purposes of FWSN in subsection (B) the same way it is in subsection (A) for purposes of delinquency.

Suggestion:

Since the term "child" for FWSN purposes is already defined subsection (1)(B) as including a 16 year old, amend subsection (7) as follows:

> (7) "Family with service needs" means a family that includes a child [~~or a youth sixteen years of age~~] who has not been legally emancipated who (A) has without just cause run away from the parental home or other properly authorized and lawful place of abode, (B) is beyond the control of the child's or youth's parent, parents, guardian or other custodian, (C) has engaged in indecent or immoral conduct, (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations, or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child or youth;

➢ Subsection 10(C) defining "delinquent act" reads: wilful failure of a child to appear in response to a summons under section 46b-133, as amended by this act, or at any other court hearing of which the child *has* notice,

Concern:

The use of the word "has" is inconsistent with the use of the word "had" in subsection 5(A)(ii). Not a significant problem, but the language should be consistent.

Suggestion:

Amend subsection 10(C) as follows:

(10) "Delinquent act" means (A) the violation by a child under the age of sixteen of any federal or state law or municipal or local ordinance, except an ordinance regulating behavior of a child in a family with service needs, (B) the violation by a child sixteen years of age of any federal or state law, other than (i) an infraction, (ii) a violation, (iii) a motor vehicle offense or violation under chapter 248, or (iv) a violation of a municipal or local ordinance, (C) wilful failure of a child to appear in response to a summons under section 46b-133, as amended by this act, or at any other court hearing of which the child [~~has~~] had notice, (D) the violation of any order of the Superior Court by a child, except as provided in section 46b-148, or (E) the violation of conditions of probation by a child as ordered by the court;

ISSUE #3 – Serious Juvenile Offenses

PA 07-4 removed from the list of serious juvenile offenses (SJO) the crimes of manslaughter in the second degree with a motor vehicle (CGS §53a-56b - Class C felony) and misconduct with a motor vehicle (CGS §53a-57 - Class D felony) except for children under the age of 16. PA 09-7 did not restore those offenses to the SJO list for a 16 year old.

Concern:

Since those two serious motor vehicle charges are not (I) an infraction, (II) a violation, (III) a motor vehicle offense or violation as defined in chapter 248, or (IV) a violation of a municipal or local ordinance, a 16 year old who is charged with one of those offenses would fall within the jurisdiction of the juvenile court but would not face any of the consequences associated with being charged with or convicted of a serious juvenile offense. Such a result would be contradictory to the clear legislative intent when the category of SJO was established in 1995 that offenses of that nature be handled as SJO charges.

Also, such a result would set up a potential constitutional issue because a person under the age of 16 would face all of the consequences associated with being charged with or convicted of an SJO whereas a 16 year old who committed the identical offense would not. That would be fundamentally unfair and possibly a denial of equal protection guaranteed by the Constitution.

Suggestion:

Amend subsection (11) as follows"

> (11) "Serious juvenile offense" means (A) the violation of, including attempt or conspiracy to violate, (i) section 21a-277, 21a-278, 29-33, 29-34, 29-35, 53-21, 53-80a, 53-202b, 53-202c, 53-390 to 53-392, inclusive, 53a-54a to [~~53a-56a~~] 53a-57, inclusive, 53a-59 to 53a-60c, inclusive, 53a-70 to 53a-71, inclusive, 53a-72b, 53a-86, 53a-92 to 53a-94a, inclusive, 53a-95, 53a-101, 53a-102a, 53a-103a or 53a-111 to 53a-113, inclusive, subdivision (1) of subsection (a) of section 53a-122, subdivision (3) of subsection (a) of section 53a-123, section 53a-134, 53a-135, 53a-136a, 53a-166 or 53a-167c, subsection (a) of section 53a-174, or section 53a-196a, 53a-211, 53a-212, 53a-216 or 53a-217b, by a child, [~~or (ii) section 53a-56b or 53a-57 by a child under sixteen years of age,~~] or (B) running away, without just cause, from any secure placement other than home while referred as a delinquent child to the Court Support Services Division or committed as a delinquent child to the Commissioner of Children and Families for a serious juvenile offense;

(Incidentally, when the Legislature created the crime of "home invasion," which later became codified as CGS §53a-100aa, in response to the tragedy in Chesire, it did not add that charge to the list of "serious juvenile offenses" as defined in CGS §46b-120. As a result, if a juvenile commits a burglary of an occupied residence while armed with a firearm, the maximum penalty faced by that

juvenile in the juvenile court is no greater than the maximum penalty that juvenile would face if he or she threw an egg at the side of the house on Halloween unless the prosecutor is able to transfer the case to the adult court because the juvenile was at least 14 at the time or if the prosecutor decides to charge a less serious charge that is on the list of serious juvenile offenses.)

ISSUE #4 – Release options

The options available to the police for the release of a person 16 or older currently include:

- Release on a promise to appear;
- Release on a non-surety bond;
- Release on a surety bond;
- Hold at the police station or other facility until presented in court;

The release options available to the police for the release of a child under 16 currently include:

- Release to a responsible adult;
- Bring to a juvenile detention center;

Subsection (c)(2) of section 72 of PA 09-7 provides an additional alternative to "release the child *(at any age)* to the child's own custody."

Concerns:

Due to the increased mobility of 16 year olds, compared with children under the age of 16, they may be arrested in a location further away from their parent making it more difficult for a parent to come to the police station to pick up the child.

For the same reason, the 16 year old and their family may be unknown to the arresting police department so the police may be more reluctant to release a 16 year old to his/her own custody or on a promise to appear. In those situations now, the police will require a bond in order to ensure the person's appearance in court. After the effect date of the Act, that option will no longer be available and that might result in more 16 year olds being brought to a juvenile detention center because the arresting officer was not confident that a promise to appear would be sufficient to ensure the 16 year old's appearance in court.

Suggestion:

In the case of a 16 year old, permit the police to utilize the same release options currently available for use in such cases.

ISSUE #5 - What if a 16 year old is both a child and an adult at the same time and in the same case?

This question applies in at least three areas when dealing with a 16 year old who is both a child and an adult at the same time and in the same case: release options, secure holding at the police station and interviewing.

The situation where a 16 year old would be both a child and an adult at the same time and in the same case is illustrated by these two examples.

Example #1: a 16 year old is stopped for operating under the influence of drugs or alcohol and when taken into custody is found to be in possession of a small quantity of marijuana. On the operating under the influence of drugs or alcohol charge, that 16 year old is an "adult" because that offense is a motor vehicle offense found in Chapter 248. On the possession of marijuana charge, that same 16 year old is a "child."

Example #2: a 16 year old is stopped for driving through a red light and when asked to produce an operator's license a substantial quantity of marijuana falls out of his/her pocket. On the charge of failure to obey a traffic signal, that 16 year old is an "adult" because that offense is an infraction. On the possession of marijuana with intent to sell charge, that same 16 year old is a "child."

Concerns:

1. **Release options** - since the options available to the police when an adult is taken into custody are different than those for a child, what options can the police use when a 16 year old is both a "child" and an "adult" at the same time in the same case?

Suggestion:

Make it clear that the police can choose to release the 16 year old on the adult charge using any of the options available in adult cases or choose to release the 16 year old on the juvenile charge using any of the options available in juvenile cases.

In example #1 above, the police might choose to set a bond or hold the person over night until presented in court the next day on the operating under the influence charge and release the person to their own custody on the possession of marijuana charge.

In example #2 above, the police might issue an infractions ticket for the charge of failure to obey a traffic signal and place the person in a juvenile detention center on the possession of marijuana with the intent to sell charge because that is an SJO.

2. **Secure holding at the police station** - because of state and federal restrictions on holding children with adults, where should a 16 year old who is both a "child" and an "adult" at the same time in the same case be held?

Subsection (d) of section 72 of PA 09-7 appears to permit the placing of a child in an adult cell or lockup as long as they are "separate and apart from any adult detainee." *(Note: the phrase "separate and apart" is not defined in the Act and may conflict with the federal requirement that requires "sight and sound separation" of juveniles and adult inmates.)*

Suggestion:

Make it clear that a 16 year old who is both a "child" and an "adult" at the same time in the same case:

- may be held in an adult cell, as an adult, with other adults, if the reason for the secure holding is the adult charge;
- may be held in a juvenile cell, as a child, with other children, if the reason for the secure holding is the juvenile charge;
- may be held in an adult cell, as a child, if held "separate and apart" from any adult detainee;

In example #1 above, the police might place the 16 year old in an adult cell with other adults on the operating under the influence charge.

In example #2 above, since the reason for the secure holding of the child would be the possession of marijuana with the intent to sell charge, because that is an SJO and the adult charge is an infraction, the 16 year old could be placed in a juvenile cell with other children or placed in an adult cell a long as they were held "separate and apart" from any adult detainee.

The police should document the reason for the secure holding decision by specifying the charge resulting in the secure holding.

3. Taking a statement from a 16 year old - because the requirements for admissibility of an admission, confession or statement by a 16 year old to a police officer are different if that 16 year old is considered to be a "child" or an "adult," what requirements are applicable if the 16 year old is both a "child" and an "adult" at the same time in the same case?

A 16 year old who is considered to be an "adult" can be interviewed by the police without a parent present and must be advised of their rights only if they are in custody and being interrogated by the police.

In the case of a 16 year old who is considered to be a "child," subsection (b) of section 75 of the Act requires the police officer to make a reasonable attempt to contact a parent or guardian of the child and to advise the child of their rights, including their right to contact a parent or guardian and to have that parent or guardian with them during the interview.

While the police should follow the juvenile guidelines if they want to be able to use anything the 16 year old says against him/her in the juvenile court, the issue might arise in a situation where a 16 year old is stopped for an adult charge such as operating under the influence or even failure to obey a traffic signal and, in response to the officer's routine question inquiring about anything illegal in the vehicle, the 16 year old admits there is a pound of marijuana in the trunk. That admission, and the marijuana seized as a result, would not be admissible in the juvenile court. In order for it to have been admissible in the juvenile court, the officer would had to have first made an attempt to notify the 16 year old's parent or guardian and had to have advised the 16 year old of his/her right to contact a parent or guardian and have them present when the question was asked. To expect an officer to do that in every traffic stop of a 16 year old is unreasonable.

Suggestion:

Provide a "good faith" provision that would allow the admissibility of an admission, confession or statement made by a 16 year old to a police officer without the requirements of subsection (b) of section 75 of the Act if the 16 year old is not in custody or if the statement was made during the course of an interview conducted pursuant to the investigation or arrest of the 16 year old for an adult charge.